IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3459 of 2000

with

SPECIAL CIVIL APPLICATION No 3461 of 2000

with

SPECIAL CIVIL APPLICATION No3785 and 3786 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL DHNJIBHAI PARSOTTAMBHAI

Versus

STATE OF GUJARAT 3RD SPECIAL LAND ACQUISITION

Appearance:

1. Special Civil Application No. 3459 of 2000

MR RM CHHAYA for Petitioners No. 1-2

MS DS PANDIT ASSTT GOVERNMENT PLEADER for Respondent No. 1

NOTICE SERVED BY DS for Respondents No. 2,4

..... for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/10/2001

COMMON ORAL JUDGEMENT

#. Heard Mr.R.M.Chhaya, learned advocate appearing on behalf of the petitioners and Ms.D.S.Pandit, learned AGP for the respondents - authorities.

#. In all these four petitions, this Court has issued RULE on 14th August, 2000 and granted interim relief in favour of the petitioners. Common questions for consideration are involved in this group of petitions and therefore, at the request of the learned advocates for the parties, all these petitions are heard together and same are being disposed of by this Common Judgement.

#. Brief facts of Special Civil Application No.3459 / 2000 are as that the petitioners are owners and occupiers of land Survey No.41 part, admeasuring 3 acres and 29 gunthas situated at Motipura village at Himatnagar. The petitioners purchased the land in question from respondent No.4 by a regular sale deed registered with Registrar of Documents on 22-4-1982 and on the basis of the said sale deed, necessary entry has been made by the competent authority being Entry No.406 dated 22-4-1982 and after following the procedure as prescribed under the Code as well as Gujarat Land Revenue Rules, 1972, the competent authority certified the said entry on 15-6-1982. According to the petitioners, they have made certain changes in the land in question by incurring huge expenses for development of agricultural activities. The respondent after period of 6 years issued a notice to show cause on the sole ground that the sale in favour of the petitioners is illegal in view of the provisions of Section 2[6] of the Tenancy Act as the petitioners even though being agriculturist, do not hold the land within the radius of 5 miles i.e. 8 kms. The petitioners in response to the notice, submitted a detailed reply and thereafter the respondent No.3 has passed order on 25-7-1991 declaring the sale to be illegal. Aggrieved of the aforesaid order, the petitioners had approached the appellate authority but the said appeal was also rejected, against which, a revision was filed before the revisional authority. However, the revisional authority - tribunal has also rejected the revision by order dated 31-12-1999.

So far the facts of Special Civil Application No.

3461 / 2000 are concerned, the petitioners are owners and occupiers of land Survey No. 30, admeasuring 3 acres and 30 gunthas situated at Himatnagar. The petitioners purchased the land in question from respondent No.4 by a regular sale deed registered with Registrar of Documents on 18-1-1982 and on the basis of the said sale deed, necessary entry has been made by the competent authority being Entry No.406 dated 19-1-1982 and after following the procedure as prescribed under the Code as well as Gujarat Land Revenue Rules, 1972, the competent authority certified the said entry on 18-4-1982. According to the petitioners, they have made certain changes in the land in question by incurring huge expenses for development of agricultural activities. The respondent after period of 6 years issued a notice to show cause on the sole ground that the sale in favour of the petitioners is illegal in view of the provisions of Section 2[6] of the Tenancy Act as the petitioners even though being agriculturist, do not hold the land within the radius of 5 miles i.e. 8 kms. The petitioners in response to the notice, submitted a detailed reply and thereafter the respondent No.3 has passed order on 25-7-1991 declaring the sale to be illegal. Aggrieved of the aforesaid order, the petitioners had approached the appellate authority but the said appeal was also rejected, against which, a revision was filed before the revisional authority. However, the revisional authority - tribunal has also rejected the revision by order dated 31-12-1999.

Brief facts of Special Civil Application No. 3785 / 2000 are as that the petitioners are owners and occupiers of land Survey No. 24, admeasuring 4041.15 sq.mtrs situated at Himatnagar. The petitioners purchased the land in question from respondent No.4 by a regular sale deed registered with Registrar of Documents on 7-9-88 and on the basis of the said sale deed, necessary entry has been made by the competent authority being Entry No.3216 dated 16-9-1988 and after following the procedure as prescribed under the Code as well as Gujarat Land Revenue Rules, 1972, the competent authority certified the said entry on 20-10-1988. According to the petitioners, they have made certain changes in the land in question by incurring huge expenses for development of agricultural activities. The respondent after period of 6 years issued a notice to show cause on the sole ground that the sale in favour of the petitioners is illegal in view of the provisions of Section 2[6] of the Tenancy Act as the petitioners even though being agriculturist, do not hold the land within the radius of 5 miles i.e. 8 kms. The petitioners in response to the notice, submitted a detailed reply and thereafter the respondent

has passed order on 25-7-1991 declaring the sale to be illegal. Aggrieved of the aforesaid order, the petitioners had approached the appellate authority but the said appeal was also rejected, against which, a revision was filed before the revisional authority. However, the revisional authority - tribunal has also rejected the revision by order dated 28-12-1999.

The brief facts of Special Civil Application No. 3786 / 2000 are as that the petitioners are owners and occupiers of land Survey No. 36/2, admeasuring 2 acres and 00 gunthas situated at Himatnagar. The petitioners purchased the land in question from respondent No.4 by a regular sale deed registered with Registrar of Documents on 22-4-1982 and on the basis of the said sale deed, necessary entry has been made by the competent authority being Entry No.1398 dated 22-4-1982 and after following the procedure as prescribed under the Code as well as Gujarat Land Revenue Rules, 1972, the competent authority certified the said entry on 7-6-1982. According to the petitioners, they have made certain changes in the land in question by incurring huge expenses for development of agricultural activities. The respondent after period of 6 years issued a notice to show cause on the sole ground that the sale in favour of the petitioners is illegal in view of the provisions of Section 2[6] of the Tenancy Act as the petitioners even though being agriculturist, do not hold the land within the radius of 5 miles i.e. 8 kms. The petitioners in response to the notice, submitted a detailed reply and thereafter the respondent has passed order on 25-7-1991 declaring the sale to be illegal. Aggrieved of the aforesaid order, the petitioners had approached the appellate authority but the said appeal was also rejected, against which, a revision was filed before the revisional authority. However, the revisional authority - tribunal has also rejected the revision by order dated 28-12-1999.

#. Learned advocate Mr.R.M.Chhaya appearing on behalf of the petitioners in all petitions has raised contention that the suo motu action initiated by the Mamlatdar are void ab initio as the same are taken after lapse of more than 3 years. It is also submitted by Mr.Chhaya that as laid down by the Hon'ble Apex Court in case of MOHAMAD KAVI MOHANAD AMIN VS. FATMABAI IBRAHIM reported in [1997] 6 SCC 71, the powers under Section 84[C] even does not prescribe any time limit for initiating proceedings, however, such power has to be exercised within reasonable time. He also submitted that in the aforesaid case before the Hon'ble Apex Court, in identical facts and situation, suo motu powers were exercised by the

Mamlatdar even after lapse of one year, was considered to be unreasonable. However, he also relied upon the decision of this Court in case of BHANABHAI MURARBHAI SOLANKI VS. STATE OF GUJARAT reported in 1994 [1] GLR 822 and submitted that if such suo motu powers exercised after reasonable period, is bad in law and therefore, it required to be quashed and set aside. Mr.Chhaya has also submitted that the petitioners of all four cases have improved the land by incurring huge expenses and therefore, if powers are exercised by the Mamlatdar beyond reasonable time, on this ground alone, the orders impugned in these petitions are required to be quashed and set aside. He also relied on the decision of this Court rendered in SCA No.8784 / 1998. Mr.Chhaya, learned advocate also further submitted that the proceedings suo motu initiated by the authority under Section 84 [C] only on the ground that the applicant who is agriculturist of village Narsipura, Taluka Idar and as did not possess any agricultural land within the vicinity of 8 kms. from the present land in question, the proceedings were initiated after lapse of three years. Therefore, he relied upon Section 26 of the Tenancy Act [Act No.4 of 1995] and submitted that the provisions has been deleted and amended and embargo of ownership of land within radius of 8 kms, no more exists on the statute and the said provision stands deleted. Mr.Chhaya, learned advocate has further submitted that in the preset case, it was admitted position that except that requirement, no breach is either alleged or committed by the petitioners and the petitioners are admittedly agriculturists and therefore, there is no ban or embargo on their purchase and / or sale of agricultural lands and therefore, as the very provision does not exist on the statute book and the same stands deleted, the impugned orders in the present petition deserve to be quashed and set aside. He also submitted that in Special Civil Application No.8784 of 1998 decided on 9-2-1999 while considering the validity of the order passed by the Tribunal in a petition filed by the State of Gujarat, the Court refused to exercise its jurisdiction under Article 226 of the Constitution considering the the two factors, namely, delay of 8 years in initiation of proceedings under Section 84 C of the Act as well as deletion of condition regarding the purchaser being required to have another agricultural land within 8 kms. He also relied upon decision of this Court in case of Gujarat Khed Kamdar Union Vs. State reported in 1993 [3] GLR 2044, wherein also it has been clearly laid down that the suo motu powers are to be exercised within reasonable time and has further held that as laid down in the case of Raghav Natha vs. State of Gujarat, such a reasonable period cannot be extended

for more than a year. Learned advocate Mr.Chhaya appearing on behalf of the petitioners has also submitted that now in view of recent Ordinance No.5 / 2000 issued by the State Government and especially in light of Section 3, 4 and 5 of the Ordinance dated 6th November, 2000, squarely covered the case of the petitioners because at the time when the matter was argued before the tribunal, the question was kept open, where such amendment having any retrospective effect or not ? However, in view of recent Ordinance No.5 / 2000 dated 6th November, 2000, the said amendment is effective with retrospective effect and in the amending Act, in Section 2, for the words "shall be deleted" is now substituted with the words "shall be and shall be deemed always to have been deleted" . Therefore, this amendment having retrospective effect as if insertion of the Act and therefore the order passed by the below authorities are required to be abated. Lastly, Mr.Chhaya has also relied upon the Circular issued by the State Government dated 20th November, 2000 in pursuance of the recent Ordinance No.5/2000 dated 6th November, 2000. Mr.Chhaya, learned advocate has specifically relied upon paras 2 to 6 of the said Circular and submitted that now in view of the clarifications made by the State Government made by the State Government how to implement the amended Ordinance No.5/2000 in respect of the pending cases, the present petition is also now required to be allowed and orders in question are now stand abated.

#. Learned AGP Ms.S.D.Pandit appearing on behalf of the respondents authorities has submitted that if transaction is illegal and contrary to law, in that case, the question of delay in initiating the proceedings under Section 84 [C] does not arise. If the order is nullity, then the authority is entitled to exercise its suo motu powers at any time without any limitation. Therefore, the powers are exercised by the Mamlatdar under Section 84-C of the Tenancy Act rightly and that is also within reasonable time because the entry of the sale deed is not certified and therefore, there was no delay in exercising the powers by the concerned authority. She also relied upon the judgment reported in;

[1] 1992 [1] GLR pg.14 and
[2] 1997 [3] GLR pg.2386

Therefore, according to her, the orders passed by the below authorities is quite legal and valid and no interference of this Court is required by this Court while exercising the powers under Article 226 and 227 of the Constitution of India. However, she further

submitted that in view of the recent Ordinance No.5/2000 dated 6th November, 2000, the amendment in Section 2 having retrospective effect and therefore, the Court may consider recent Ordinance No.5/2000 dated 6th November, 2000.

#. I have considered the submissions made by the learned advocates for the parties and also considered the facts of the each petition. In each of the petition, the sale deed is registered and necessary entries have been made in the revenue record and thereafter, the respondent authority has initiated the proceedings under Section 84-C of the Tenancy Act after period of six years. Though reply was submitted by the petitioners and thereafter the respondent authority has set aside the sale deed only on the ground that though the petitioners being agriculturists do not hold the land within the radius of 5 miles namely 8 kms. as required under Section 2[6] of the Tenancy Act. Therefore, in all these petitions the short question is that delay in exercising the suo motu powers and effect of the recent Ordinance No.5/2000 dated 6th November, 2000.

#. I have perused the orders passed by the below authorities and the below authorities have considered the contention of the petitioners and ultimately come to the conclusion that Section 2[6] of the Tenancy Act has been violated and therefore, the powers can be exercised by the authority under Section 84-C of the Act. As such, there was no limitation in exercising such powers. However, considering the fact that the below authority has come to the conclusion that the entry in respect of each transaction has not been certified and therefore, powers have been exercised by the authority within reasonable time. However, the below authorities have also considered the recent amendment in Tenancy Act under Section 2 [6] of 1995 and come to the conclusion that such amendment having no retrospective effect and therefore that contention was negatived by the below authority.

#. In light of the orders passed by the below authorities, the view taken by the Apex Court in case of MOHAMAD KAVI MOHAMAD AMIN VS. FATMABAI IBRAHIM reported in [1997] 6 SCC 71. The relevant observations made in para-2 are as under :-

"2. Although Mr.Bhasme, learned counsel appearing for the appellant took a stand that under Section 63 of the aforesaid, there should

not be any discrimination amongst the agriculturists with reference to the State to which such agriculturist belongs. But according to him even without going into that question the impugned order can be set aside on the ground that suo motu power has not been exercised within a reasonable time. Section 84-C of the Act does not prescribe any time for initiation of the proceeding. But in view of the settled position by several judgments of this Court that wherever such power should be exercised within a reasonable time. In the present case, the transfer took place as early as in the year 1972 and suo motu enquiry was started by the Mamlatdar in September, 1973. If sale deeds are declared to be invalid the appellant is likely to suffer irreparable injury, because he has made investments after the aforesaid purchase. In this connection, behalf of the appellant reliance was placed on a judgment of Justice S.B.Majmudar [as he then was in the High Court of Gujarat] in State of Gujarat v. Jethamal Bhagwandas Shah disposed of on 1-3-1990, where in connection with Section 84 C itself it was said that the power under the aforesaid section should be exercised within a reasonable time. This Court in connection with other statutory provisions, in the case of State of Gujarat v. Patil Raghav Natha and it the case of Ram Chand v. Union of India has impressed that where no time limit is prescribed for exercise of a power under a statute if does not mean that it can be exercised at any time, such power has to be exercised within a reasonable time. We are satisfied that in the facts and circumstances of the present case, the suo motu power under Section 84-C of the Act was not exercised by the Mamlatdar within a reasonable time. Accordingly, the appeal is allowed. The impugned orders are set aside. No costs."

#. Now, the breach of Section 2[6] which has been found by the below authorities and on that basis, sale transaction in each petition has been declared to be illegal and therefore, in light of this fact, it is necessary to refer the Gujarat Ordinance No.5/2000 dated 6th November, 2000, the relevant Section 2 to 5 with explanation are reproduced as under :-

"1. Short title and commencement [1] This Ordinance may be called the Bombay Tenancy and

Agricultural Lands [Gujarat Amendment] Amending Ordinance, 2000.

(2) It shall come into force at once

2. Guj. 4 of 1995 to be temporarily amended - during the period of operation of this Ordinance the Bombay Tenancy and Agricultural Lands [Gujarat Amendment] Act, 1995 [hereinafter referred to as `the amending Act'] shall have effect subject to the amendment specified in Section 3.

3. Amendment of Section 2 of Guj. 4 of 1995 - In the amending Act, in Section 2, for the words "shall be deleted" occurring at two places, the words "shall be and shall be deemed always to have been deleted" shall be substituted.

4. Abatement of legal proceedings - All proceedings relating to any order made or purported to be made under Section 84 C of the Bombay Tenancy and Agricultural Lands Act, 1948 [hereinafter referred to as `the principal Act'] for contravention of provisions of Section 63, so far as it relates to the breach of clause [6] of Section 2 of the Principal Act, pending before any court, tribunal or other authority or any such proceedings initiated by any such authority on or after the commencement of the amending Act shall stand abated notwithstanding anything contained in section 84 C of the Principal Act.

5. Saving - The amendment made by Section 3 shall not affect the validity of any such order referred to in Section 4, made by any court, tribunal or other authority before the date of commencement of the amending act, which has become final.

Explanation : For the purpose of this section, the word `final" means no appeal, revision or any other proceeding is pending before any court, tribunal or other authority against any such order on the date of commencement of the amending act.

##. However, it is also necessary to consider the statement of the recent Ordinance which is as under :-

The restrictions to hold the agricultural land by

distance of more than 5 miles i.e. 8 kilometers or the entire area of land shall form one compact block and the residential requirement for personal supervision for cultivation of land, have been removed by the Bombay Tenancy And Agricultural Lands [Gujarat Amendment] Act, 1995.

The State Government has received several representation from farmers for withdrawal of the cases pending before any court, tribunal or other authority on the commencement of the said amending Act as they are facing hardships, particularly when the Government has already removed the aforesaid restrictions. In order to remove the such hardships, itis considered necessary to amend the said amending Act so as to remove the aforesaid restriction with the retrospective effect and to provide that the cases pending before any court, tribunal or other authority for contravention of Section 63 so far as it relates to breach of clause [6] of Section 2 of the principal Act, shall stand abated. It has also been provided that the amendment shall not affect the validity of any such order passed by any court, tribunal or any authority prior to commencement of the amending Act, which has become final.

As the Gujarat Legislative Assembly is not in Sessions, this Ordinance is promulgated to amend the said amending Act to achieve the aforesaid object.

##. Considering the recent Ordinance No.5/2000 amending sub section 2 of the Act [Gujarat No.4 / 1995] is having retrospective effect and in all four petitions, the order passed by the Gujarat Revenue Tribunal dated 28th December, 1999 and 31st December, 1999 have been challenged by the petitioners. These petitions have been filed on 15th March, 2000, admittedly prior to the recent Ordinance dated 6th November, 2000. Therefore, considering the provisions of the recent Ordinance as referred to above, proceedings relating to any order made or purported to be made under Section 84-C of the Tenancy Act for contravention of the provisions of Section 63 so far it relates to the breach of Clause 6 of Section 2 of Principal Act pending before any Court, tribunal or other authority or any such proceedings initiated by any such authority on or before after commencement of the amending Act shall stand abated notwithstanding anything contained

in Section 84-C of the Principal act. The `word' finally has also been extended in recent Ordinance, means, no appeal, revision or any other proceeding is pending before any Court, Tribunal or any other authority against any such order on the date of commencement of Amending Act. Therefore, the provisions of the Clause 5 shall not have any effect because the matter is not final as the orders passed by the Gujarat Revenue Tribunal on 28th July, 1999 and 31st December, 1999 have been challenged by the petitioners in the present petitions on 15th March, 2000, obviously before recent Ordinance dated 6th November, 2000. Therefore, since the petitions are pending before this Court and considering the effect of the recent Ordinance and looking to the observations made by the Apex Court referred to above, according to my opinion, the orders passed by the appellate authority impugned in each of the petition shall stand abated. Rule is made absolute in each petition. No order as to costs.

Date : 4-10-2001 [H.K.Rathod, J.]

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